

Falls Church, Virginia 22041

File: (b) (6) – Kansas City, MO

Date: FEB - 9 2018

In re: (b) (6)

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Alejandro J. Solorio, Esquire

ON BEHALF OF DHS: Ian Tomasic
Assistant Chief Counsel

APPLICATION: Asylum; withholding of removal; Convention Against Torture

The respondent, a native and citizen of Guatemala, has appealed from the decision of the Immigration Judge dated February 27, 2017, denying his applications for asylum, withholding of removal, and protection under the Convention Against Torture. Sections 208(b)(1)(A) and 241(b)(3)(A) of the Immigration and Nationality Act, 8 U.S.C. §§ 1158(b)(1)(A) and 1231(b)(3)(A); 8 C.F.R. §§ 1208.16, 1208.18. The Department of Homeland Security (“DHS”) opposes the appeal. The appeal will be dismissed.

We review findings of fact determined by an Immigration Judge, including credibility findings, under a “clearly erroneous” standard. 8 C.F.R. § 1003.1(d)(3)(i). We review questions of law, discretion, and judgment and all other issues in appeals from decisions of Immigration Judges *de novo*. 8 C.F.R. § 1003.1(d)(3)(ii).

We adopt and affirm the decision of the Immigration Judge. *Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994). The Immigration Judge’s favorable credibility determination is not clearly erroneous (IJ at 5). 8 C.F.R. § 1003.1(d)(3)(i). However, the respondent, who received threats from gang members who sought to recruit him into their gang or to collect payment of a recurring fee if he would not join, did not establish harm rising to the level of persecution (IJ at 7-8). *Malonga v. Holder*, 621 F.3d 757, 766 (8th Cir. 2010).

Nor did the respondent meet his burden of establishing a well-founded fear of persecution on account of a protected ground where the proposed group of “young males being persecuted and threatened by local gangs and fearful to report to authorities” lacks particularity and has not been shown to be socially distinct within Guatemalan society, and the characteristic of youth is not immutable (Tr. at 52). Section 208(b)(1)(B)(i) of the Act; *see Matter of W-G-R-*, 26 I&N Dec. 208, 212-16 (BIA 2014), *aff’d in part*, *Reyes v. Lynch*, 842 F.3d 1125 (9th Cir. 2015); *Matter of M-E-V-G-*, 26 I&N Dec. 227 (BIA 2014). While the record reflects that widespread gang violence is a serious problem in Guatemala, this does not provide a basis for asylum relief without evidence that the respondent may be targeted for persecution on account of a protected ground. *Matter of M-E-V-G-*, 26 I&N Dec. at 235 (“asylum and refugee laws do not protect people from general conditions of strife, such as crime and other societal afflictions”).

Because the respondent did not establish the lower burden of proof applicable to asylum, he necessarily did not establish his eligibility for withholding of removal, which carries a higher burden of proof. 8 C.F.R. § 1208.16(b); *Gutierrez-Vidal v. Holder*, 709 F.3d 728, 733-34 (8th Cir. 2013); *Matter of N-C-M-*, 25 I&N Dec. 535 n.1 (BIA 2011).

The Immigration Judge separately considered the respondent's application for protection under the Convention Against Torture (IJ at 10-11). Based on the entirety of the record, the respondent, who has not been tortured in the past, has not established that it is more likely than not that he will be tortured "at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity" upon his return to Guatemala. 8 C.F.R. § 1208.18(a)(1). The likelihood of torture is a question of fact that we review for clear error. *Matter of Z-Z-O-*, 26 I&N Dec. 586 (BIA 2015). Here, the Immigration Judge's finding that the respondent has not demonstrated a likelihood of torture is not clearly erroneous. 8 C.F.R. § 1003.1(d)(3)(i).

The respondent has requested on appeal that the record be remanded so that he can receive voluntary departure (Respondent's Br. at 1). The respondent, through counsel, conceded at proceedings below that he is ineligible for post-conclusion voluntary departure (Tr. at 20). Therefore, this issue has not been preserved for appeal. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.


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